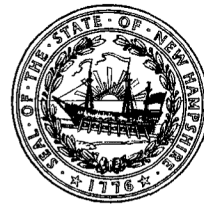




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

April 5, 2005

Irwin Corp.  
Attn: Bruce A. Wright  
PO Box 6145  
Laconia, NH 03247-6145

Re: Docket No. AF 04-100 – Irwin Corp.

Dear Mr. Wright:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on April 5, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Sarani,  
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
James Martin, DES Public Information Officer  
Tammy Calligandes, DES WMD

Irwin Corp  
P.O. Box 6145  
Laconia, NH 03247-6145

Re: Irwin Marine, 958 Union Ave., Laconia, NH  
UST ID # 0-111703

**ADMINISTRATIVE FINE  
No. AF 04-100**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Irwin Corp. parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Irwin Corp ("Irwin") is the registered facility owner of one underground storage tank ("UST") system at Irwin Marine ("the Facility"), further identified as UST # 0-111703, located on real property at 958 Union Avenue, Laconia, NH 03246 ("the Property").
3. On December 9, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-100 ("the Notice") to Irwin seeking fines totaling \$2,000 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Irwin for violating Env-Wm 1401.32(i)(2) by failing to provide corrosion protection to the 4,000-gallon gasoline UST. Pursuant to Env-C 607.03(e) the Division sought a fine of \$1,000.
5. The Notice further cited Irwin for violating Env-Wm 1401.33 by failing to provide corrosion protection for the piping for the 4,000-gallon gasoline UST. Pursuant to Env-C 607.03(f) the Division sought a fine of \$1,000.
6. In order to settle this matter, the Division and Irwin have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
7. Of the proposed fine, in the amount of \$2,000, 20% or \$400 shall be suspended due to the Irwin's history of compliance at this facility. An additional 20% or \$400 shall be suspended due to Irwin's good faith effort to comply with applicable environmental laws. An additional 20% or \$400 shall be suspended due to Irwin's cooperation in providing information and correcting the violations. An additional 20% or \$400 shall be suspended due to this being a one-time violation at this facility.

8. The suspended portion of the proposed fine, in the amount of \$1,600 is contingent upon Irwin maintaining the subject facility in compliance with Env-Wm 1401 for a period of two years from the date of execution of this document. If Irwin fails to maintain compliance during the two-year period the suspended portion of the proposed fines, in the amount of \$1,600 shall become due and payable immediately. If Irwin maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

9. Irwin agrees to pay the remaining \$400 upon execution of this agreement by Irwin.

10. Payment under Paragraph #9 and any payment that becomes due pursuant to Paragraph #8 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

11. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

12. By executing this Agreement, Irwin waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

13. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Irwin, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

14. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,  
Irwin Corp.

3/31/05  
Date

**COPY**  
[Signature]  
By: Bruce A. Wright  
Duly Authorized

DES Waste Management Division

4/5/05  
Date

**COPY**  
[Signature]  
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 5<sup>th</sup> day of April, 2005.

**COPY**  
[Signature]  
Michael P. Nolin, Commissioner  
Department of Environmental Services